

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Application of:

Rebecca Ann Esaw

Respondent.

Case No. H-37532 LA

OAH No. 2011100515

**PROPOSED DECISION**

Administrative Law Judge Howard Posner, Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California on December 13, 2011.

Diane Lee, Staff Counsel, represented Complainant Connie Trujillo, Deputy Real Estate Commissioner in the Department of Real Estate (Department).

Respondent Rebecca Ann Esaw represented herself.

Oral and documentary evidence was received and the matter was submitted December 13, 2011.

The Department brings this Statement of Issues to deny Respondent's application for a real estate broker license. For the reasons set out below, the denial of the license is upheld.

**FACTUAL FINDINGS**

*Jurisdiction and Background*

1. Complainant issued this Statement of Issues in her official capacity.
2. On December 3, 2009, Respondent applied for a real estate salesperson license. The Department refused to grant the application and Respondent timely requested a hearing.

*Criminal Convictions*

3. On December 29, 1999, in Los Angeles County Superior Court, Case No. 9SB09598, respondent was convicted on her no contest plea of violating Vehicle Code section 23140, subdivision (a) (person under 21 driving with a blood alcohol level of 0.05 percent or more), a misdemeanor. Respondent was 18 years old. Respondent was

sentenced to three years of summary probation with driving privileges suspended for one year, and a fine of \$1,364.50 or 272 hours of community service, and \$275 restitution to the city of Torrance. She was required to complete a three-month first-offender alcohol and drug education and counseling program. The terms of respondent's sentence changed several times because respondent violated probation more than once. She eventually served 120 days in county jail as punishment for this crime and the crime described in Factual Finding 4.

4. On September 12, 2000, in Los Angeles County Superior Court, Case No. 0SB06341, Respondent was convicted on her no contest plea of violating Health and Safety Code section 11550, subdivision (a) (using or being under the influence of a controlled substance), a misdemeanor. Respondent was arrested after her parents called the police. She was sentenced to two years summary probation and 90 days in county jail. The jail term was suspended and respondent was sent to a diversion program. She eventually served 120 days in county jail.

5. On June 25, 2001, in Los Angeles County Superior Court, Case No. 1SB02469, Respondent was convicted on her no contest plea of violating Vehicle Code section 14601.2, subdivision (a) (driving with a suspended or revoked license), a misdemeanor. She was sentenced to ten days in county jail, with credit for ten days served, and a fine of \$1,386 or 248 hours community service, and ordered to pay \$100 restitution.

6. On January 4, 2002, in Los Angeles County Superior Court, Case No. 1SP02082, Respondent was convicted on her no contest plea of violating Vehicle Code section 14601.2, subdivision (a) (driving with a suspended or revoked license), a misdemeanor. The court found there was a factual basis for respondent's plea and sentenced her to 30 days in county jail with credit for 30 days served, and three years summary probation. The court imposed fines and assessments in an amount that cannot be discerned from the record; respondent served seven days in jail in lieu of some or all of the monetary penalties.

7. On June 18, 2002, in Los Angeles County Superior Court, Case No. SA043882-2, Respondent was convicted on her guilty plea of violating Health and Safety Code Section 11378 (possession of controlled substance for sale), a felony, and convicted on the same day of violating Health and Safety Code Section 11377, subdivision (a) (possession of controlled substance), a felony, in Case No. YA051512, consolidated with Case No. SA043882-2. The possession for sale conviction in Case No. SA043882-2 arose out of an arrest in which respondent was found to have 2.2 grams of amphetamine and narcotics paraphernalia. The possession conviction in Case No. YA051512 arose out of an arrest in Inglewood on April 8, when sheriff's deputies stopped a car in which respondent was a passenger, noticed she was not wearing a seat belt, learned that she had two outstanding arrest warrants from Case No. SA043882-2, and in a search incident to arrest, found crystal methamphetamine. Respondent was sentenced to 109 days in county jail, with credit for 73 days in actual custody with 36 days "good time/work time," and three years formal probation.

8. On July 23, 2003, in Los Angeles County Superior Court, Case No. 3SB01702, Respondent was convicted on her no contest plea of violating Health and Safety code Section 11550 (using or being under the influence of a controlled substance), a misdemeanor. Respondent was arrested January 27, 2003 in a hotel room after admitting to police officers that she had been smoking methamphetamine and was feeling its effects as she spoke to them. Respondent was ordered into a “sober living program,” ordered to pay booking fees of \$275 to the city of Torrance, and placed on two years summary probation.

9. On March 8, 2004, in Los Angeles County Superior Court, Case No. YA057771,<sup>1</sup> respondent was convicted on two guilty pleas of violating Health and Safety Code section 11377, subdivision (a) (possession of controlled substance), a felony, and Penal Code Section 148.9, subdivision (a) (giving false identification to peace officer), a misdemeanor. Respondent was arrested because of outstanding warrants during a traffic stop of a car in which she was a passenger, and a search during booking turned up concealed crystal methamphetamine and smoking paraphernalia. Respondent gave the arresting officer a false name and date of birth at the arrest site, but later told him that she had given him her sister’s name and date of birth. She also told him she lived on the street and smoked methamphetamine daily. The court ordered her into in-patient drug treatment “for 6 to 12 months.” A year later, on March 1, 2005, the court revoked probation and apparently re-sentenced respondent to three years formal probation and 195 days in jail, with credit for 130 days actually served and 65 days “good time/work time.” I cannot be discerned how much jail time was actually imposed.

10. On March 1, 2005, in Los Angeles County Superior Court, Case No. TA068969-01, Respondent was convicted, on a plea of guilty or no contest,<sup>2</sup> of violating Health and Safety Code Section 11377, subdivision (a) (possession of controlled substance), a felony. The conviction was based on a March 5, 2003, arrest. The record contains no evidence about the arrest. Respondent was evidently placed on probation that was revoked on September 1, 2005 because she did not appear for required drug tests. The court sentenced respondent to two years in prison, with credit for 234 days served.

11. On June 27, 2006, in Los Angeles County Superior Court, Case No. NA069508, Respondent was convicted of violating Penal Code Section 4530, subdivision (a) (escape from prison), a felony. On February 22, 2006, Respondent, then serving a jail term, had walked out of an unlocked, unguarded building in which she was to stay in a drug treatment furlough program. Four days later she turned herself in to the Long Beach Police Department. Respondent was sentenced to 16 months in state prison, with credit for 31 days served.

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<sup>1</sup> Paragraph 10 of the Statement of Issues erroneously alleges this conviction occurred on March 1, 2005.

<sup>2</sup> The court records contain a form order with a box checked “plea” as grounds for conviction, and no indication of whether the plea was guilty or no contest.

12. On April 21, 2009, in Los Angeles County Superior Court, Case No. 9Y03442, Respondent was convicted on her no contest plea of violating Penal Code section 242 (battery), a misdemeanor. Respondent was arrested after she kicked the manager of a Torrance bar who had asked respondent and her boyfriend to leave the establishment. Respondent testified at hearing that she and the manager were both drunk. Respondent was fined \$1,206, placed on summary probation for two years, and ordered to attend 52 sessions of an anger management program. Respondent completed probation in April 2011.

#### *Mitigation, Aggravation and Rehabilitation*

13. Every conviction listed above, except the first and last, was a violation of probation.

14. All of respondent's convictions involved alcohol or drugs, particularly crystal methamphetamine. Her history of alcohol and drug abuse began when she was a high school freshman, according to her father, John Esaw, who testified at hearing. Esaw (who has been a licensed real estate salesperson for more than 30 years) also testified that going to prison was the best thing that ever happened to Respondent; she came out with a different attitude, willing to face problems instead of running from them.

15. Respondent counts April 22, 2009, the day after her last arrest (Factual Finding 13) as her sobriety day. She attends Alcoholics Anonymous meetings daily. She met her boyfriend of fourteen months through AA, and their social circle consists mostly of recovering alcoholics. She and her AA "home group" occasionally engage in activity feeding the homeless. Respondent submitted a letter from her AA sponsor, who attested to her devotion to sobriety and growth as a person.

16. Respondent works as a server at the Elephant Bar restaurant in Downey. Her job involves handling alcoholic beverages.

### LEGAL CONCLUSIONS

1. Cause exists to deny the license under Business and Professions Code<sup>3</sup> sections 475, 480 and 10177, as alleged in paragraph 13 of the Statement of Issues. Section 480, subdivision (a)(1) (which, under section 475, governs a license denial under these circumstances) allows a board to deny a license to an applicant who has been "convicted of a crime," if the crime is "substantially related to the qualifications, functions, or duties of the business or profession for which application is made." (§480, subd. (a)(3)(B).) Section 10177, subdivision (b), which applies specifically to the Department, similarly allows it to deny a license to an applicant who has been convicted of "a crime substantially related to the qualifications, functions, or duties of a real estate licensee[.]"

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<sup>3</sup> Statutory references are to the Business and Professions Code, unless otherwise stated.

2. California Code of Regulations title 10, section 2910,<sup>4</sup> subdivision (a)(11) provides that there is substantial relationship if there are “[t]wo or more convictions involving the consumption or use of alcohol or drugs when at least one of the convictions involve driving and the use or consumption of alcohol or drugs.” All respondent’s convictions except the two convictions for driving without a valid license (Factual Findings 5 and 6) and the escape from prison conviction (Factual Finding 11) are by definition substantially related under this provision (Factual Findings 3, 4 and 7 through 12). Her conviction for battery (Factual Finding 12), and her conviction for possession for sale (Factual Finding 7) are substantially related under CCR section 2910, subdivision (a)(8), which provides, “Doing of any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator or with the intent or threat of doing substantial injury to the person or property of another [is substantially related].” All of respondent’s eleven convictions in about as many years constitute a “pattern of repeated and willful disregard of law,” and are substantially related under subdivision (a)(10).

3. Respondent has the burden of showing rehabilitation from her convictions. The Department’s criteria for rehabilitation are set out in CCR section 2911, and include:

(a) The passage of not less than two years since the most recent criminal conviction or act of the applicant that is a basis to deny the departmental action sought. (A longer period will be required if there is a history of acts or conduct substantially related to the qualifications, functions or duties of a licensee of the department.)

[REDACTED]...[REDACTED]

(c) Expungement of criminal convictions resulting from immoral or antisocial acts.

[REDACTED]...[REDACTED]

(e) Successful completion or early discharge from probation or parole.

(f) Abstinence from the use of controlled substances or alcohol for not less than two years if the conduct which is the basis to deny the departmental action sought is attributable in part to the use of controlled substances or alcohol.

(g) Payment of the fine or other monetary penalty imposed in connection with a criminal conviction or quasi-criminal judgment.

(h) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the conviction or conduct that is the basis for denial of the agency action sought.

(i) Completion of, or sustained enrollment in, formal education or vocational training courses for economic self-improvement.

[REDACTED]...[REDACTED]

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<sup>4</sup> Further references to the California Code of Regulations are cited as “CCR.”

(l) Significant or conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.

m) New and different social and business relationships from those which existed at the time of the conduct that is the basis for denial of the departmental action sought.

(n) Change in attitude from that which existed at the time of the conduct in question as evidenced by any or all of the following:

(1) Testimony of applicant.

(2) Evidence from family members, friends or other persons familiar with applicant's previous conduct and with his subsequent attitudes and behavioral patterns.

(3) Evidence from probation or parole officers or law enforcement officials competent to testify as to applicant's social adjustments.

[¶]...[¶]

(5) Absence of subsequent felony or misdemeanor convictions that are reflective of an inability to conform to societal rules when considered in light of the conduct in question.

4. Respondent has met some of the criteria. She has been sober more than two years (criterion (f), Factual Finding 15). She has demonstrated a changed attitude (criterion (m), Factual Findings 14 and 15). She has different friends (criterion (m), Factual Finding 15). She seems to have achieved a stable domestic relationship (criterion (h), Factual Finding 15). There was not enough evidence to establish whether her AA group's occasional efforts to feed the homeless (Factual Finding 15) would amount to "significant or conscientious involvement" in alleviating social problems (criterion (l)).

5. She has not met other criteria of rehabilitation. None of respondent's convictions has been expunged (criterion (c)), and there was no evidence as to payment of fines (criterion (g)) or enrollment in education or vocational training (criterion (i)). She successfully completed probation (criterion (e)) only on her last conviction (Factual Findings 3-13).

6. The most significant criterion under these circumstances is criterion (a), requiring passage of more than two years since the last conviction if there is a history of substantially related crimes. Respondent was for roughly half her life a drug and alcohol addict, constantly in trouble with the law. She has gone a long way toward turning her life around, and the enthusiasm with which she embraces sobriety is laudable, but the period in which she has avoided trouble is still brief in relation to the time in which she was never free of it. She was still on probation less than a year ago. Before she can be entrusted with a real estate license she needs to have a more substantial track record of good citizenship and

continue establish that she has maintained her sobriety and turned her life around. It is too soon to grant her application.

ORDER

Respondent Rebecca Ann Esaw's application for a real estate salesperson license is denied.

DATED: January 11, 2012

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HOWARD POSNER  
Administrative Law Judge  
Office of Administrative Hearings